

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 678 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SADHU ISHWARDAS GORDHANDAS

Versus

HEIRS OF DCD.MANGALDAS GORDHANDAS SADHU AND OTHERS.

Appearance:

MR YN OZA with MR GM JOSHI for Petitioners
MR BP GUPTA for Respondent No. 1
MR YS MANKAD for Respondent No. 2
MS MINAXI A MANKAD for Respondent No. 3
NOTICE UNSERVED for Respondent No. 7
MR SS PATEL AGP for Respondent No. 9

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 06/10/1999

ORAL JUDGEMENT

1. The appellants in this appeal have challenged the
judgment and order passed in Civil Misc. Application No.
3 of 1968 dated 19.1.1978 by the learned District Judge,

Kutch at Bhuj whereby the learned Judge allowed the said application by declaring the properties at items no. 4,5 and 6 to be the properties of the public trust and setting aside the order passed by the Charity Commissioner in so far as it relates to the properties referred to above and, thus, confirmed the decision of Deputy Charity Commissioner. Therefore, the question that is to be decided in this appeal is whether the properties at items no. 4,5 and 6 are the properties of public trust or private properties belonging to the appellants.

2. In order to appreciate the dispute involved in this matter, the facts stated in the judgment of the District Court are required to be stated as under:-

In village Nakhatrana of Kutch District, there are certain properties consisting of a temple of Laxminarayanji and adjoining buildings. It is not in dispute that the temple of Laxminarayanji constitute a public trust. The said temple was built by the Ex-Ruler of the then Kutch State. The temple is an ancient temple. One Ramdas, a Fakkad (unmarried saint) was the first Pujari of the temple. A wadi, by name Khimchand wadi was endowed to this temple for its maintenance in S.Y.1843 under the document Ex. 33 on the file of the Charity Commissioner. Mother Shri Radhaji, wife of the then Ruler endowed the wadi to the temple of Murli Manohar. It is revealed from the said document that at the relevant time, Sadhu Ramdas was the Pujari of the temple. Under the document, the temple was given certain rights to collect the cess on certain commodities like agricultural product, jaggery etc. The pujari was also given a right to collect half or one kori on the marriage occasion from the bridegroom party. The pujari was also entitled to uncooked meals. It appears that one Narandas alias Narasangdas, a Fakkad was the Chela of Sadhu Ramdas and upon the death of Ramdas, he acted as a pujari of the temple. One Sevasdas was the chela of Narsangdas. It further appears that during the life time of Narsangdas, Sevaram took to Grahasthi by getting himself married. On the death of Narsangdas, Sevaram took over as a pujari and on the death of Sevaram, his son Haridas took over as a pujari and after his death, his son Gordhandas took over as pujari. The present appellants are the sons of Gordhandas.

3. It is not in dispute that the properties at items no. 3 to 6 were being occupied by the family members of Gordhandas Haridas including the appellants. In 1949, the Union of India took over the management from the then Ruler of Kutch State. Thereupon, the Collector of the District took over the management of the trust

properties. On account of abolition of Jagir, Khimchand wadi was lost. However, annuity was fixed to be given to the temple. The record of the Collector giving details about the properties taken over under the management came to be lost, but the register Ex. 69 of the Charity Commissioner's file gives some idea of the properties taken over under the management. In 1962, the Bombay Public Trust Act was extended and made applicable to this part of the State. The Deputy Charity Commissioner started suo motu inquiry being Inquiry No. 134 of 1964 under section 19 of the Bombay Public Trust Act. In the said inquiry, the Collector of Kutch, the pujari of the temple by name Govardhandas and Shah Gangji Sakarchand were joined as opponents. In the said inquiry, pujari claimed the temple and all the adjoining properties as his private properties, but at one stage of the inquiry, he submitted Ex. 8 statement of Charity Commissioner's file stating that the temple and Dharamshala and the right on the annuity amount were public properties. The Deputy Charity Commissioner, at the conclusion of the inquiry, held that all the properties including the properties at items no. 3 to 6 were public trust properties and the Collector was the trustee of the trust. Against the said decision of the Deputy Charity Commissioner, Sadhu Govardhandas Haridas filed an appeal being Appeal No. 19 of 1964 before the Charity Commissioner, Gujarat State, Ahmedabad. The learned Joint Charity Commissioner, on 30.10.1967, allowed the said appeal in part and declared that the properties at items no. 4 to 6 were private properties. However, he held that the property at item no.3 was a public trust property.

4. Against the said decision, the present respondents no. 2 and 3 preferred Civil Misc. Application No. 3 of 1968 before the District Court under section 72 of the Bombay Public Trust Act. The father of appellants Sadhu Govardhandas also filed Civil Misc. Appeal No. 39 of 1967 challenging the finding recorded in respect of the property at item no.3. The District Court, on 8.7.1969, disposed of both the applications by a common judgment by dismissing the application preferred by Sadhu Govardhandas and allowed the application preferred by present respondents no. 2 and 3 and it was held that the properties at items no. 4 to 6 were public trust properties, but were meant for residential use and occupation of the hereditary pujari. Sadhu Govardhandas preferred two appeals being Appeal No. 47 of 1969 and 1294 of 1968 before this Court. This Court, by a common judgment and order, dismissed the First Appeal No. 1294 of 1968 with regard to the

property at item no.3 while set aside the order passed by the District Court, allowing the Appeal No. 47 of 1969 and remanded the matter to the District Court for deciding the application in accordance with law in light of the directions given in the judgment. This Court permitted the parties to lead evidence with regard to the properties referred to as properties no. 4 to 6 and to have a good map prepared by the Commissioner to be appointed by the District Court at the expense of the appellant. It was also directed to get the translation of the relevant documents and then to decide afresh the question regarding the ownership of these properties. The District Court, in compliance with the directions, appointed a Commissioner to prepare a good map of the properties at items no. 4 to 6. During the course of inquiry before this Court, the Collector got prepared a map through Overseer of Jagir Branch which is at Ex.83 which describes all the adjoining properties including the properties at items no. 4 to 6 of the temple. The learned District Judge, in compliance with the directions given by this Court, after allowing the parties to lead the evidence and after hearing the parties, by his impugned judgment and order dated 19.1.1970, while allowing the application being Civil Misc. Application NO. 3 of 1968, held that the properties at items no. 4 to 6 are the public trust properties, which is challenged by way of this appeal.

5. Mr.G.M.Joshi, learned advocate appearing for the appellants, after having taken me through the relevant record contended that by virtue of Ex. 10, Narsangdasji purchased the properties in question by three different transactions, from one Varod Paba by paying in all 65 kories. In the submission of Mr.Joshi, it was a personal transaction between the two private individuals and, therefore, it is not correct to say that Narsangdasji purchased the properties as the Sevak and for the deity of Laxminarayanji. Mr. Joshi, therefore, submitted that the appellants being the heirs of Narsangdasji, they have become the owner of the properties at items no. 4 to 6.

6. Mr.Y.S.Mankad, learned advocate appearing for the respondent no.2 on the other hand submitted that the properties in question were purchased by Narsangdasji as a Sevak of the deity and, therefore, the said purchase was for and on behalf of the deity Laxminarayanji and he, therefore, refuted the claim of the appellants as being the owners of the said properties.

7. Since I am concerned with the properties at items no. 4 to 6 which were purchased under the document Ex.

10 of S.Y. 1869, it is necessary to consider the terms of the said document with a view to ascertain whether the properties in question form the part of the public trust. The learned advocates appearing for the parties have frankly stated that no weight can be attached to the oral evidence led by the parties inasmuch as none of the witness has any personal knowledge as to the intention of the parties as to whether the properties in question were purchased in S.Y.1869. The document Ex. 10 of the Charity Commissioner's file is translated in English which reads as under:-

"Ex.10

On the 14th day of Kartik Sud Samvant Year 1869
at Nakhatrana, name of the creditor Narasangji
servant of Thakerji Shri Laxminarayanji debtor's
name Varond Paba and Vala and Aju Jagani. The
debtor owes kories 30 Thirty in that
consideration one room alongwith Osari and
compound is sold (Agat Hamiravar).

The above writing is to be followed as like as
father's directions to be followed by his son.
The parties are residing at Nakhatrana.

1.Marks Varod Para Witness of sun
Jagmanali above
witness is true. 1.witness of almighty sun
witness of Patel Mana
Ravat.
1.Joshi Sunder Laljiani
1.Joshi Harji in the
present of two parties
1.Rathod
1.Kantaji Mavani
1.Thacker Jiva Bhanjhiani
1.written by Thacker
Dharu Karamshiani
in the presence of
two parties.
1.witness as Ladha son
of Pragji in the
presence of parties.

20 kories in cash in consideration of kories 20
on the 7th day of Magsar Vad, one room of the
northern side along with Agna has been sold
(Aghat Hamiravar)in all kories 50 in that
consideration two rooms along with adjoining
compound has been sold (agat) by Paba and Valo

and Agu Jaguani whatever written should be observed as father's words to be observed by his son.

- 1. Witness by the almighty sun
- 1. Witness by Patel Mana Rahiyat
- 1. Witness by Joshi Manji Bhimjiani
in presence of two parties.
- 1. Witness by Thaker Hasanji Vasamani
in the presence of two parties.
- 1. Written by Thacker Jiva Bhanjiani
in presence of two parties.

Further all the houses belonging to Varod Paba Jagmalani whatsoever had been sold to Laxminarayanji are described. On the eastern side belonging to Varond Bhoja on Northern side public road. On western side vada of Mau Meghji. On southern side, temple of Thakorji. All these houses are sold (Aghat) in consideration of kories 65 in words sixty five whatever written above is to be observed as being the words to be followed by his son parties are residing at Nakhatrana.

- 1. By Pabo. 1. witness by the almighty sun
- 1. witness Patel Mana Rahiyat
- 1. witness by Hardsa son of
Malji in the presence of two
parties.
- 1. written by Thacker Jiva Bhanji
in the presence of two parties
- 1. witness by Pasu Nanji in the
presence of two parties. "

8. Before I interpret the document at Ex. 10, certain clarification regarding the translation is required to be made. In the first part of the document, the word 'dhanikram' is translated as 'creditor' while the word 'udharanik' is translated as 'debtor'. However, the correct meaning of the word 'dhanikram' is 'a vendee' and the word 'udharanik' means 'a vendor'. Mr. Joshi, learned advocate appearing for the appellants, relying upon the translation, tried to contend that initially the vendor Varond Paba was the debtor and he sold his properties in consideration of a debt. Mr. Joshi submitted that as he was owing an amount of 30 cories to Narasangdasji, in consideration of that debt, he had given one room, osari and a compound and, therefore, this being a personal transaction between the two private individuals, it would necessary follow that the property was purchased for consideration of a debt. However, when

the correct meaning of these two words, as aforesaid, was pointed out to Shri Joshi by showing an authentic book of "Kutchdesh Shiristasangrah, a compilation of customs in the Kutch State", Mr. Joshi frankly did not pursue his submission on that count.

9. Having closely perused the document Ex. 10, it appears that it is in three parts. The first part describes consideration of 30 cories; the second part describes consideration of 20 cories and the third part describes the entire consideration of 65 cories. Reading the entire document, it is clear that the properties stated therein were purchased for 65 cories. Mr. Joshi, however, tried to submit that the description of the purchaser Thakoreji Shri Laxminarayanji's Sevak Narasangdasji would go to suggest that Narasangdasji purchased the property by describing himself as the Sevak of deity Thakoreji Shri Laxminarayanji. Therefore, no importance can be attached to its description. Since he was performing 'pooja' of deity Laxminarayanji, ordinarily he would like to describe himself as the Sevak of deity Laxminarayanji. More important aspect of the instant case is that Narsangdasji purchased the property from Varond Paba. Mr. Mankad, however, on the other hand, wanted me to accept that the properties were purchased through Narsangdasji, as the Sevak of the temple of Laxminarayanji. Reading the first part of the document, it is not possible to come to the conclusion as to who purchased the property and from whom. It is possible that the property was purchased by Narsangdasji in his individual capacity. It is equally possible to hold that he purchased the property as a pujari of the temple. However, reading the document further, it appears that the properties were in fact conveyed to the deity. The third part of the document reads as under:-

"Further all the houses belonging to Varod Paba Jagmalani whatsoever has been sold to Laxmi Narayanji are described."

This is not the exact translation in the sense that it does not give the true and exact meaning of the sentence. The substantive sentence written in the vernacular language reads

The correct interpretation and translation of this sentence is to the effect that the properties have been conveyed to the deity Laxminarayanji. In my opinion, this sentence will clinch the issue. If at all it was a personal transaction between Narsangdasji and Varond Paba, there was no necessity to state that the properties were conveyed to the deity. It has come out in the

evidence that Narsangdasji was a Fakkad unmarried saint and, therefore, he was not expected to have his personal properties. Mr. Joshi tried to point out by reading the evidence of Gordhandas that Sevadas who was a chela of Nrasangdas became "Grahasthi" and, therefore, it became necessasry for Narsangdasji to purchase the properties. As stated above, none of the witnesses have any personal knowledge about the purchase of the properties and, therefore, it is not possible for me to accept the bare words of the witness in absence of any documentary evidence. However, in view of the fact that Narsangdasji being a Fakkad unmarried saint, he was not expected to have his personal properties and, therefore, he could not have purchased the properties for his own purpose. On the contrary, the temple could not have foundit difficult to purchase the properties in 65 cories as the temple was enjoying the part of usufructs of the wadi and cess on certain commodities.

10. In view of this, I am clearly of the opinion that when the vendee made a clear recital in the document that the properties were conveyed to the deity, it was a clear expression to the effect that there was conveyance to the deity. The said recital by itself is sufficient to warrant a conclusion that the properties were purchased by the temple and for the temple and not by Sadhu Narsangdasji in his personal capacity.

11. Since this was the only contention raised on behalf of the appellants, it is not necessasry for me to consider as to how the properties came to be dealt with subsequently and or to refer other circumstances. Thus, after interpreting the document Ex. 10, I am clearly of the opinion that the properties in question were purchased by the temple. Therefore, they were the public trust properties. The appellants shall occupy the premises at items no. 4 to 6 which are held to be public trust properties so long as they perform seva pooja of the deity of the temple, without claiming any ownership rights. Suffice it to say that I am in total agreement with the reasoning and ultimate conclusion arrived at by the learned District Judge.

In this view of the matter, the appeal fails and is dismissed with no order as to costs, except the costs of the Charity Commissioner to be paid by the appellants.

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